

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

JOE DANIEL HOLT, JR.,

Plaintiff,

V.

JOHN EDMOND MAYS,

Defendant.

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Case No. 2:08-cv-1483-KOB-JEO

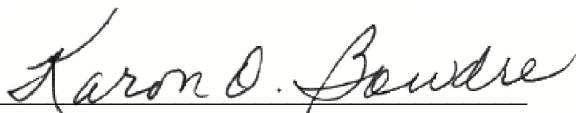
## MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on October 15, 2008, recommending that this action filed pursuant to 42 U.S.C. § 1983 be dismissed for failing to state a claim upon which relief can be granted under 28 U.S.C. § 1915A(b). The plaintiff filed objections to the report and recommendation on October 28, 2008, arguing that the defendant, the plaintiff's former lawyer in a criminal case: (1) breached his duty by failing to return the plaintiff's money; (2) contributed to the false imprisonment of the plaintiff; and (3) was acting at all times under color of state law. The plaintiff further argues that the magistrate judge's recommendation conflicts with the laws of the federal and the state constitution, and asserts that he has been deprived of his personal liberty and sentenced to cruel and unusual punishment.

The undersigned concurs with the magistrate judge's determination that the court has no subject matter jurisdiction over the plaintiff's claim of legal malpractice against his former defense attorney. Accordingly, having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and the recommendation is ACCEPTED.

The complaint is therefore due to be dismissed for failing to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915A(b). A Final Judgment will be entered.

DATED this 6<sup>th</sup> day of November 2008.

  
KARON OWEN BOWDRE  
UNITED STATES DISTRICT JUDGE